U.S. Department of Homeland Security
20 Massachusetts Avenue N.W. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: San Francisco, CA Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant married [redacted] a lawful permanent resident of the United States, on April 20, 1992 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse.

The District Director concluded that the divorce obtained by the applicant and Mr. [redacted] was a sham and for the sole purpose of gaining immigration benefits. Additionally, the District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director* dated May 28, 2003.

On appeal, counsel contends that the applicant did not commit fraud to gain admittance into the United States, but if the U.S. Citizenship and Immigration Services determines that the applicant did commit fraud, she is entitled to a waiver of inadmissibility because [redacted] will suffer extreme hardship if the applicant is not admitted to the United States. Counsel submitted a brief, letters from the applicant and [redacted] a medical report o[redacted] a letter from two licensed clinical social workers regarding the psychological condition of the applicant's son, letters from family, friends, and employers, school records for the children, tax returns, and credit card statements. Counsel asserts that [redacted] ould suffer extreme financial, emotional, and physical hardship if the applicant is not admitted to the United States. The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO makes no finding regarding the validity of the applicant's divorce. The District Director concluded that the divorce was a sham; this conclusion was based on conflicting testimony from the applicant and Mr.

Villatoro, inconsistent information in forms and applications, and the birth of a child three and one-half years after the alleged divorce. The file does not contain a marriage certificate or a divorce certificate from Guatemala. It appears that the applicant submitted both documents and that a district adjudications officer sent the documents to Guatemala for verification. The record contains no determination about the authenticity of the documents.

The applicant did, however, commit fraud on other occasions by providing false information when applying for admission to the United States. The applicant stated that she and her husband were divorced in 1985. On December 20, 1990, the applicant applied for a nonimmigrant visa at the American Embassy in Guatemala City. The applicant indicated that she was married and listed her name as [redacted] She also stated that she depended on "my father and my spouse" for financial support. The approval for the nonimmigrant visa was cancelled because of fraud. Counsel maintains that the applicant may not have completed the form by herself, and if so, any misrepresentation would have been an error on the part of the person helping her. In her personal statement, the applicant stated that she was not sure if she filled out her own paperwork or whether she paid someone else to do it. Counsel's explanation for the false information is not reasonable. First, the applicant stated that she might have completed the application herself, in which case errors could not be blamed on someone else. Second, even if the applicant paid someone else to complete the application, counsel does not offer a reason why the person would use false information. Third, counsel does not explain how such fundamental information was falsely entered on the application, yet the remainder of the information on the application was apparently accurate.

The applicant married Mr. [redacted] in the United States on April 20, 1992. She returned to Guatemala shortly thereafter. On October 31, 1992 the applicant applied for admission to the United States at San Diego, California. The applicant presented a Guatemalan passport with her maiden name, [redacted] The passport contained a United States B1/B2 nonimmigrant visa issued on September 30, 1992 in the applicant's maiden name. The applicant was admitted as a B-2 nonimmigrant for pleasure authorized to stay in the United States until April 30, 1993. Counsel contends that the applicant had neither the time nor the money to amend her passport, and that when the applicant returned to Guatemala after marrying Mr. [redacted] she was preoccupied with the care of her sick mother and did not think about changing her name on the passport. Additionally, counsel maintains that the applicant did not comprehend the dire consequences of failing to change the name on her passport, and that she listed her maiden name on the visa application because she wanted the name on her passport to match the name on the visa application. Counsel's explanation for the inaccurate information is not reasonable. First, the applicant had six months to change the information on her passport, and counsel's statement that it was not enough time is not supported by any facts. Second, counsel does not specify the cost of amending the passport, nor does she explain how the applicant could afford to make a trip to Guatemala and then return to the United States, yet not have enough money to amend the passport. Third, the applicant's preoccupation with caring for her ill mother could have just as easily made the applicant more conscientious about the accuracy of the information, given that her pending immigration status in the United States would directly impact her ability to care for her mother. Fourth, the applicant did comprehend the consequences of her actions. The false information that she had provided during her attempt to gain admission to the United States in 1990 had resulted in the cancellation of her visa. Fifth, the applicant knew that her marital status was inaccurately listed on her passport. She could have listed correct information on the visa application and then explained the inconsistency to the processing official. Instead, she apparently consciously listed false information on the visa application.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by Mr. [redacted] Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship "is not . . .fixed and inflexible," and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals has held that separation from family may be "[t]he most important single [hardship] factor," and "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First examined is the financial impact on Mr. [redacted] f the applicant's departure from the United States. Counsel contends that [redacted] will "suffer extraordinary financial difficulties if his wife is denied admissibility into the United States." Counsel stated that the applicant's income is significantly larger than [redacted] and that she plays a crucial economic role in the family. Counsel referred to Exhibits 14 & 15. Exhibit 14 is a 2002 W-2 Form for the applicant, but the spaces where her income should be listed are blank. Exhibit 15 i[redacted] 2002 W-2 Form, which listed his income as approximately $34,000. The file contains a Form G-325A (Biographic Information) for the applicant that was completed on November 9, 1999; the form indicated that the applicant did not work outside the home between 1992 and 1999, which means the family survived during those years without the applicant's income. Counsel asserted that [redacted] s salary alone would not adequately support him and his three children, however, two of applicant's children are adults [redacted] is 25 years old, and [redacted] is 21 years old. [redacted] is not required to support his two adult sons, who can work and possibly assist their father financially if necessary. When the family purchased a home on June 25, 2003,

they knew that the applicant might not be able to stay in the United States. Finally [redacted] has the option of moving to Guatemala to be with the applicant. Counsel does not address whether [redacted] could find suitable employment in Guatemala. Given that [redacted] was born in Guatemala, lived there until he was 34 years old, and works as a welder (a skilled position) in the United States, it is likely that he could find a meaningful job in Guatemala. Accordingly, the applicant has not demonstrated that her removal to Guatemala would cause serious financial hardship to [redacted]

The next *Cervantes* factor examined is country conditions where the qualifying relative would relocate. In her personal statement, the applicant stated that [redacted] worried that something would happen to the applicant if she returned to Guatemala because it is dangerous there. The applicant stated that her nephew had recently been killed in front of the house of the applicant's mother. The applicant does not explain the circumstances of the killing, nor does she explain how they relate specifically to her or [redacted] The applicant appears to be referring to the general risk of being a victim of crime. It should be noted that the applicant and [redacted] lived for many years in Guatemala without incident. Counsel submitted no evidence concerning country conditions in Guatemala. Applicant has not demonstrated that [redacted] would experience substantial hardship because of country conditions in Guatemala.

Another *Cervantes* factor is significant health conditions, particularly if appropriate medical care is unavailable in the country where the qualifying relative would relocate. Counsel asserts that [redacted] physical health would suffer if the applicant is forced to leave. Since learning of the possible removal of the applicant, [redacted] has experienced chest pains and shortness of breath. Counsel submitted a medical report fro[redacted]f the Permanente Group. The report does not list any serious health condition or a plan for treatment, nor is any medication prescribed [redacted] instructed [redacted] to return to the office if he has chest pain that lasts for more than five minutes. [redacted] also instructed [redacted] to return for a treadmill stress test. Accordingly, the record does not establish that [redacted] is suffering from any serious health condition. Counsel also submitted a letter written by two licensed social workers from the Kaiser Permanente Medical Center. This letter refers to applicant's son [redacted], who is not a qualifying relative in determining hardship.

The final *Cervantes* factor analyzed is family ties and the effect of separation from family. The physical symptoms experienced by [redacted] the qualifying relative, at the prospect of the applicant's removal were analyzed in the previous paragraph. Counsel also contends that if the applicant were removed from the United States, [redacted] might fall into a depression because it runs in his immediate family. Counsel submitted no documentation from a doctor or mental health care professional to support this claim, nor did counsel explain why such depression could not be treated. As a lawful permanent resident [redacted] has liberal rights to travel outside the United States and can visit the applicant in Guatemala. Additionally, the record contains no evidence supporting the view tha[redacted] would suffer extreme hardship if he lived in Guatemala with the applicant.

Counsel also submitted a variety of letters from the applicant's friends and relatives, as well as school records for the children. These letters of support do not directly relate to whether [redacted] would suffer extreme hardship if the applicant were removed to Guatemala.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of*

Pilch, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that Mr. [redacted] will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decision of the District Director is affirmed.

ORDER: The appeal is dismissed.